

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

E.A. RENFROE & COMPANY,)	
INC.,)	
)	
Plaintiff,)	
)	
v.)	CASE NO.:2:06-CV-01752-WMA
)	
CORI RIGSBY MORAN and KERRI)	
RIGSBY,)	
)	
Defendants.)	

EMERGENCY MOTION FOR RELIEF

COME NOW the undersigned counsel of record for non-parties Richard F. Scruggs, D. Zachary Scruggs, and The Scruggs Law Firm, P.A. (collectively, “Scruggs”), and, without waiving claims relating to the jurisdiction of this Court over Scruggs, respectfully move this Court for relief from the Preliminary Injunction and Protective Order issued by this Court on December 8, 2006 (Doc. 60)¹, for the limited purpose of complying with an order issued by the United States District Court for the Southern District of Mississippi. This motion is styled as an “emergency motion” because Scruggs has been ordered to respond to the Mississippi order by July 7, 2008, and Scruggs seeks relief from this Court prior to that time.

¹Scruggs does not concede that the December 8, 2006 Preliminary Injunction applies to Scruggs.

In support of this motion, Scruggs states as follows:

1. On September 7, 2007, deposition subpoenas were issued for Richard F. Scruggs and D. Zachary Scruggs by State Farm Fire & Casualty Insurance Company (“State Farm”) in *McIntosh v. State Farm Fire & Cas. Ins. Co., et al.*, Civil Action No. 1:60cv1080-LTS-RHW, in the United States District Court for the Southern District of Mississippi.

2. On January 14, 2008, Richard and Zach Scruggs were served with subpoenas duces tecum, in connection with the deposition notices, by State Farm and E.A. Renfroe & Company, Inc. (“Renfroe”). These subpoenas request Scruggs to produce numerous documents, and Request No. 17 seeks any and all documents represented to Scruggs as having been “taken from, removed from, copied from, forwarded from, or downloaded from, directly or indirectly, any State Farm office or State Farm computer system, including, without limitation, emails, pertaining to or arising out of Hurricane Katrina” (*McIntosh* Doc. 1026 at 5 and 1027 at 5). This request therefore potentially implicates the documents copied by the Rigsbys and provided to Scruggs, which are the subject of this Court’s December 8, 2006 Preliminary Injunction and Protective Order.

3. As set forth in detail in Scruggs May 30, 2008 Opposition to Renfroe’s Motion for Compensatory Sanctions for Civil Contempt (Doc. 324), Scruggs has engaged in a diligent search for – and production of – all documents arguably covered

by the Preliminary Injunction. The bulk of these documents were returned in the late winter/early spring of 2007. Additional hard copy documents were returned in the fall of 2007 after being discovered in Scruggs's little used Moss Point office. Counsel for Scruggs subsequently searched Scruggs's electronic files and on December 18, 2007 produced hard copy print outs of all documents possibly subject to the Preliminary Injunction that were located, even though these were not new documents but rather multiple copies of documents that had already been returned. These documents were subsequently sent to the Court by Jack Held, counsel for Renfroe (*See Exhibit A*).

4. As this Court is aware, Scruggs did not delete the electronic versions of the documents subject to the Preliminary Injunction that were located during the search of Scruggs's electronic files because of the indictments in the Northern District of Mississippi. As indicated in the December 18, 2007 letter from Scruggs attorney Bruce Rogers to Renfroe attorney Jack Held (*Exhibit A*), the electronic versions of the documents were maintained.²

5. Scruggs timely objected to producing the documents requested in the *McIntosh* subpoenas on numerous grounds, and State Farm moved to compel production (*McIntosh* Doc. 1075). Scruggs filed an opposition to State Farm's motion to compel (*McIntosh* Doc. 1107), wherein Scruggs argued that he should not be

²Scruggs is not certain that the electronic files printed in hard copy are subject to Request No. 17, as these documents may have come from Renfroe, as opposed to State Farm. However, Scruggs brings this motion out of an abundance of caution.

compelled to produce any Rigsby documents because of this Court's Preliminary Injunction. The Mississippi magistrate judge overruled Scruggs's objections and ordered Scruggs to produce the requested documents (*McIntosh* Doc. 1194).

6. Scruggs subsequently moved for a stay (*McIntosh* Doc. 1200) and filed an objection to the magistrate judge's order directing that the Rigsby documents be produced (*McIntosh* Doc. 1201). Scruggs again argued that he should not be forced to produce the Rigsby documents because of this Court's Preliminary Injunction (*Id.* at 8-9). State Farm responded to this objection (*McIntosh* Doc. 1202), and Scruggs filed a reply in support of the objection (*McIntosh* Doc. 1205). In the reply, Scruggs stated as follows:

Turning specifically to Request Number 17, the Order of the Magistrate Judge appears to call for production of documents that may be subject to Judge Acker's injunction. The Scruggses continue to object to any order that could put them in violation of Judge Acker's December 8, 2006 preliminary injunction order. . . .

(*Id.* at 1-2). Scruggs also pointed out that State Farm could obtain these same documents from Renfroe, even stipulating that Scruggs would not oppose disclosure to State Farm of the Rigsby documents currently being held by this Court (*Id.* at 2-4).

7. On June 20, 2008, United States District Judge L.T. Senter, Jr., of the Southern District of Mississippi, issued an order (*McIntosh* Doc. 1212) and memorandum opinion (*McIntosh* Doc. 1211) overruling Scruggs's objections to the magistrate judge's discovery order. In directing that Scruggs produce the documents

sought in Request Number 17, Judge Senter made no reference to the arguments raised by Scruggs regarding this Court's Preliminary Injunction. Scruggs has been directed to produce the subject documents within fifteen days, or by July 7, 2008.

8. Scruggs is currently in a precarious position. If Scruggs does not produce the requested documents, Scruggs may face contempt charges in Mississippi. If Scruggs does produce the documents, Scruggs may face additional contempt proceedings in Alabama.

9. Scruggs is in a similarly problematic position with respect to the depositions, wherein Scruggs may be asked to testify about documents subject to this Court's Preliminary Injunction.

WHEREFORE, THE PREMISES CONSIDERED, Scruggs respectfully requests that this Court enter an Order (a) relieving Scruggs from this Court's December 8, 2006 Preliminary Injunction and Protective Order for the purpose of giving deposition testimony and responding to the subpoenas duces tecum issued by the United States District Court for the Southern District of Mississippi in *McIntosh* and (b) permitting Scruggs to copy and deliver to State Farm the documents returned to Renfroe by Scruggs on December 18, 2007 and currently being held by this Court in order to respond to the *McIntosh* subpoenas. As an alternative to the relief requested in part (b), Scruggs requests permission to generate and produce to State Farm another set of hard copy print outs of the electronic files that have been retained.

Finally, Scruggs respectfully requests that the Court rule on this motion prior to July 7, 2008. Scruggs does not request oral argument, as Scruggs believes this matter can be adequately resolved on the papers.

Respectfully submitted this the 24th day of June, 2008.

/s/ John W. Keker

John W. Keker (*Pro Hac Vice Admission*)

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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2008, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the following:

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